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No. 00-601

IN THE

Supreme Court of the United States

SHARP ELECTRONICS CORPORATION
Petitioner,

v.

DEUTSCHE FINANCIAL SERVICES CORPORATION
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF

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REPLY BRIEF

Pursuant to Rule 15.6, Petitioner Sharp Electronics Corporation ("Sharp") submits this Reply Brief which addresses the new points raised in the Brief in Opposition filed by Respondent Deutsche Financial Services Corporation ("Deutsche Financial").

1. The Post-1956 History of Rule 56(c) Further Establishes that Entry of Summary Judgment *Sua Sponte* is Improper

Deutsche Financial declaims that "[c]ontrary to Petitioner's review of the history behind this Rule [56(c)], the story does not end with the discharge [in 1956] of the Advisory Committee [on Rules for Civil Procedure] as recounted in 4 Wright & Miller, *supra* § 1006, at 34." Br. in Opp'n at 9. Respondent adds that in 1960 a newly formed Advisory Committee on Civil Rules reconsidered the amendment to Rule 56(c)—"Summary judgment, when appropriate, may be rendered against the moving party"—proposed by the Advisory Committee in its October 1955 Final Report to this Court. *Id.* But this "new point" merely reinforces Sharp's position that the Court of Appeals' panel opinion in this case is contrary to the language of Rule 56.

In correspondence to the members of the Advisory Committee, its Reporter, Professor Benjamin Kaplan, described the proposed amendment to Rule 56(c) as "adequate to accomplish the purpose of permitting judgment

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[1] As noted in the Petition for Writ of Certiorari, this Court took "no action" on the proposed 1955 amendments and discharged the Advisory Committee the following year. Pet. for Cert. at 11. In 1960, a newly appointed Advisory Committee on Civil Rules was formed, and it undertook "a reappraisal" of the proposed 1955 amendments as its "first order of business." Benjamin Kaplan, *Amendments of the Federal Rules of Civil Procedure, 1961-1963 (I)*, 77 Harv. L. Rev. 601, 603 (1964).

without cross-motion against the moving party." *See* Report of Proposed Amendments to the Rules of Civil Procedure for the United States District Courts (October 1955) at XV-3, attached to Professor Kaplan's letter dated November 3, 1960.[2] Professor Kaplan observed that without the proposed or similar amendment to Rule 56(c) explicitly granting courts the power to enter summary judgment in that fashion, "[i]t may be argued that the moving party is not thinking in terms of judgment going against him and may be caught unprepared." *Id.* at XV-2.

In support of the proposed amendment, Professor Kaplan added that "amended Rule 56(c) will give [the moving party] explicit warning; and if he apprehends on receiving the adversary's papers or at argument that he is in trouble, he can seek a continuance under Rule 56(f) to enable him to assemble further evidence to avert judgment." *Id. See also* Benjamin Kaplan, *Amendments of the Federal Rules of Civil Procedure, 1961-1963 (II)*, 77 Harv. L. Rev. 801, 828 (1964) ("The question [underlying the proposed amendment to Rule 56(c)] is one of avoiding surprise and assuring that the party cast has had full opportunity to defend."). The amendment, however, was "[n]ot approved" by the new Advisory Committee. *See* Tentative Consensus Reached at Advisory Committee Meeting December 5-7, 1960 at 6, attached to Professor Kaplan's letter dated January 18, 1961.

This Court specifically reserved the question whether summary judgment properly could be granted in favor of a non-moving party in what Professor Kaplan described as "the little noticed case of" *Fountain v. Filson*, 336 U.S. 681, 682-83 (1949). Report of Proposed Amendments to the Rules of

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[2] Correspondence from Professor Kaplan to members of the Advisory Committee regarding the proposed amendment is available at the Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, D.C. 20544.

Civil Procedure for the United States District Courts (October 1955) at XV-2. That continues to be the state of the law. And the Advisory Committee took no action in 1960, and has taken none since, to amend the Rule so as to resolve the Court's reservation.

2. Every Circuit Court Addressing the Propriety of Granting Motions for Summary Judgment *Sua Sponte* Has *Not* Upheld the Practice

Respondent states that the decision by the United States Court of Appeals for the Fourth Circuit to grant summary judgment *sua sponte* in favor of Deutsche Financial "was in accord with every circuit court that has addressed the issue." Br. in Opp'n at 12. To illustrate this, Respondent cites a case from each federal circuit—omitting the Eighth Circuit. *Id.* at 12-13. That Circuit held that "[t]he Federal Rules of Civil Procedure contemplate entry of judgment only after a motion by a party." *Williams v. City of St. Louis*, 783 F.2d 114, 116 (8th Cir. 1986) (citing Fed. R. Civ. P. 56(a) and (b)); *see also Demerath Land Co. v. Sparr*, 48 F.3d 353, 356 (8th Cir. 1995).

The *Williams* court emphasized that the Eighth Circuit "consistently has interpreted rule 56 to mean that although a district court may assist through pre-trial proceedings in sharpening the issues, a court may not pose the issue and then proceed to decide the same without a motion for summary judgment." *Id.* (internal quotations omitted). The court acknowledged that "there is some authority for permitting a district judge to enter summary judgment sua sponte but courts of the eighth circuit have taken a position of strict compliance with the provisions of the rule." *Id.* (internal quotations and alterations omitted). Deutsche Financial is simply wrong in contending that "every circuit court" addressing the propriety of granting summary judgment *sua sponte* has concluded that courts have that power.

Furthermore, only the Eighth Circuit's interpretation is consistent with the plain meaning of Rule 56.

3. The Plain Meaning of Rule 56 Precludes Entry of Summary Judgment *Sua Sponte*

This Court repeatedly has instructed that the Federal Rules of Civil Procedure should be interpreted to give effect to their plain meaning. *See, e.g., Business Guides, Inc. v. Chromatic Communications Enters., Inc.*, 498 U.S. 533, 540 (1991) ("We give the Federal Rules of Civil Procedure their plain meaning."); *Walker v. Armco Steel Corp.*, 446 U.S. 740, 750 n.9 (1980) ("The Federal Rules should be given their plain meaning."); *see also Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 391 (1990) (interpreting Rule 11 "according to its plain meaning"); *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 351-52 (1981) (applying plain meaning of Rule 68). As noted in our Petition for Writ of Certiorari, the clear and unambiguous language of Rule 56 allows only a "party" to initiate the summary judgment procedures set forth in the rule. Fed. R. Civ. P. 56(a) and (b). Pet. for Cert. at 9-10.

No provision in the carefully crafted rule provides courts with the authority to entertain motions for summary judgment on their own initiative. Nor can the Court of Appeals' actions be harmonized with the requirement in Rule 56(c) that a motion for summary judgment "shall be served at least 10 days before the time fixed for the hearing," in order to allow the adverse party an opportunity to "serve opposing affidavits." Fed. R. Civ. P. 56(c).[3] In its Brief in Opposition,

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[3] Federal appellate courts have strictly enforced this provision as a procedural safeguard in the summary judgment process. For example, in *Sharlitt v. Gorinstein*, 535 F.2d 282, 283 (5th Cir. 1976), the defendants filed a motion for summary judgment in the district court seeking judgment as a matter of law as to plaintiffs' claim. The district court granted the motion and, subsequently, entered judgment *sua sponte* for

Respondent makes no attempt to refute that the plain meaning of Rule 56 precludes courts from entertaining motions for summary judgment *sua sponte*.

CONCLUSION

It is a flight of fancy for Deutsche Financial Services Corporation to contend that Sharp Electronics Corporation "suffered no prejudice" when the Court of Appeals panel suddenly turned the tables on it. Deutsche Financial had,

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defendants on their counterclaim after determining that the issues raised in the counterclaim were identical to those previously resolved in defendants' motion for summary judgment. *Id.* The *Sharlitt* court reversed the *sua sponte* grant of summary judgment, holding that "Rule 56 clearly requires that the party opposing summary judgment be given notice of a motion for that relief and be allowed 10 days within which to submit affidavits." *Id.*

The Fifth Circuit explained that it would "not countenance the final termination of a party's defense to an asserted claim by judgment on the claim entered without a motion for summary judgment and *the rule-required notice and opportunity to develop any defense*." *Id.* (emphasis added). *See also Massey v. Congress Life Ins. Co.*, 116 F.3d 1414, 1417 (11th Cir. 1997) (holding that "the notice provision [of Rule 56(c)] ensures that litigants will have at least ten days in which to formulate and prepare their best opposition to an impending assault upon the continued viability of their claim or defense"); *Stella v. Town of Tewksbury*, 4 F.3d 53, 55 (1st Cir. 1993) ("Since Rule 56 provides in part that motions for summary judgment 'shall be served at least 10 days before the time fixed for the hearing,' and expressly allows nonmovants to serve opposing affidavits at any time prior to the day of the hearing, summary judgment targets should be secure in the knowledge that they will have at least 10 days in which to formulate and prepare their best opposition to an impending motion."); *Estate of Smith v. Tarrant County Hosp. Dist.*, 691 F.2d 207, 209 (5th Cir. 1982) (reversing *sua sponte* grant of summary judgment as a result of district court's failure to give notice as required by Rule 56, court held that "[i]t might be that after twenty-three months, the district court was well satisfied that both parties had unearthed all of the facts and legal support that were to be found. But we will not assume that the plaintiffs have already produced all of their ammunition.").

after all, fought tooth-and-nail against summary judgment and for trial, asserting disputed facts and the need for "additional material facts." Rule 56, as adopted by this Honorable Court, does not permit an application of this sort.

Petitioner Sharp Electronics Corporation urges that its petition for writ of certiorari be granted.

Respectfully Submitted,

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